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FISCAL IMPACT REPORT

ORIGINAL DATE 2/02/07
 LAST UPDATED 2/12/07 HB 546/aHBIC/aHJC

SPONSOR Trujillo

SHORT TITLE Manufactured Housing Division Powers & Duties SB _____

ANALYST C. Sanchez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$100.0*	\$100.0*	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

* Amount shown is estimate submitted by RLD.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Office of the Attorney General (OAG)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment of Section 2. Section 60-14-19 NMSA 1978 (being Laws 1983, Chapter 295, Section 24) as follows:

D. The director may issue a license to an applicant . . . if:

(2) the director is satisfied that no incident of unlicensed work:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against

the applicant ~~or the division~~

Striking the words “or the division” appears to be clean-up language since an unresolved consumer complaint against the division should not hold up an application.

E. Any unlicensed person who has performed unlicensed work may settle the

administrative claims against that unlicensed person without becoming licensed if the claims arise from that person's first offense and that person pays an administrative fee . . .

Synopsis of HBIC Amendment

House Bill 546 amends Section 60-14-4 NMSA 1978 of the Manufacturing Housing Act ("Act"). The amended language is intended to clarify there will be no fiscal impact. The Regulation and Licensing Department intends to use existing personnel to enforce the provisions specified in HB546. The language as it previously read appeared to imply the Department/Division was seeking additional FTE's to accomplish the goal of investigating and prosecuting unlicensed activity.

Synopsis of Original Bill

House Bill 546 amends Section 60-14-4 NMSA 1978 of the Manufacturing Housing Act ("Act"), to allow the Superintendent of the Regulation and Licensing Department to employ personnel necessary to investigate and institute legal action against licensees and individuals (unlicensed manufactured housing contractors) violating the Act.

Currently, the Manufactured Housing Act requires administrative actions against manufactured housing licensees (dealers, brokers, salespersons, repairmen, installers, and manufacturers) to be instituted by the Office of the Attorney General. HB 546 would allow these administrative actions to be pursued by Manufactured Housing Division staff.

HB 546 also amends the Act to provide an internal department/division process through which an unlicensed manufactured housing contractor may administratively resolve criminal misdemeanor charges against him/her and become licensed—therefore allowing person(s) to bypass a criminal action by resolving the complaint with Manufactured Housing Division directly.

According to RLD, before being allowed to pursue such an administrative settlement of unlicensed charges and licensure, the following must be achieved:

1. The Director of the Manufactured Housing Division must be satisfied no incident of unlicensed work caused monetary damage to a consumer, or otherwise resulted in an unresolved consumer complaint (filed with the Manufactured Housing Division), and
2. The unlicensed contractor must pay an administrative penalty/fee as follows:
 - In an amount up to 10% of the contract price or the value of the unlicensed work (as determined appropriate according to the discretion of the Manufactured Housing Committee); or
 - In an amount between 1% and 5% of the total bid amount- if the work was bid for by the unlicensed contractor, but not awarded to and performed by the unlicensed contractor.

HB 546 states that an unlicensed contractor may, on a first offense only, resolve claims (for unlicensed work) without becoming licensed. However, to do this, the administrative penalty outlined above must be paid.

Finally, HB 546 provides for the assessment of an additional administrative fee in the amount of 10%, to address compliance activity costs incurred by the Manufactured Housing Division staff.

FISCAL IMPLICATIONS

It is expected that the administrative penalties collected through this new Manufactured Housing Division process will result in income to the General Fund. It is difficult to predict the amount of income to the General Fund because it is likely that because of increased compliance enforcement efforts on the part of the department/division, the number of cases pursued and resolved will increase over the course of the next several years.

SIGNIFICANT ISSUES

The bill does not define its use of the term “claims”, or the phrase “settle the claims against that unlicensed person”. By authorizing unlicensed persons to “settle claims” against them without becoming licensed, the bill appears to be allowing those persons to perform additional unlicensed work in order to remedy situations. In fact, the bill appears to prevent licensure of unlicensed persons if their work caused monetary damage to any person or resulted in an unresolved consumer complaint. Allowing continued unlicensed activity by persons ineligible for licensure may be construed as a limited exception from the licensing requirements of the act.

The bill would allow division investigators to institute “legal action in the name of the division to enforce the provisions of Section 60-14-19 NMSA 1978.” That section contains penalty provisions which include criminal penalties, civil penalties upon petition to the court by the Attorney General, and penalties under the Unfair Trade Practices Act for warranty violations. Since the division is state agency, those investigators would have to be licensed attorneys receiving commissions as Special Assistant Attorney’s General from the Attorney General. Otherwise they may not represent the state in judicial proceedings.

PERFORMANCE IMPLICATIONS

The proposed provisions fit into the purpose of the Manufactured Housing Division, which includes precluding/mitigating harm to consumers.

ADMINISTRATIVE IMPLICATIONS

The Regulation and Licensing Department is currently planning to absorb the additional staff/resource costs associated with implementing this new Manufactured Housing Division administrative process into its (RLD’s) existing staff and budget resources.

As an increased number of cases are pursued and resolved over the next several years, it is expected that the Manufactured Housing Division may require additional staff and budget resources. The Regulation and Licensing Department may be capable of absorbing the initial phases of implementation of this administrative process into its existing staff and budget resources. However, as the program continues to grow and with successful enforcement, additional Manufactured Housing Division resources may be necessary.

TECHNICAL ISSUES

New Section 60-14-19D(2)(b) refers to consumer complaints filed “against the applicant or the division”. It is unclear as to the circumstances which could result in a consumer complaint being filed “against” the division.

The bill places its new licensure and claims settling provisions in NMSA Section 60-14-19, which is the penalty section of the act. It does not amend or refer to NMSA Section 60-14-7 which prohibits unlicensed activity.

OTHER SUBSTANTIVE ISSUES

RLD holds that given their other significant responsibilities, most law enforcement agencies, the Office of the Attorney General and most District Attorneys do not have the resources to investigate and prosecute these related crimes, particularly cases involving unlicensed dealers, salesperson, broker, repairman, manufacturer or installers.

This HB 546 will allow RLD to address manufactured housing matters without having to go through these other judicial agencies.

The proposed legislative language is modeled after the administrative process available to the Construction Industries Division of the Regulation and Licensing Department. The process has proven to be an effective and expeditious manner of resolution of unlicensed contracting matters for the Construction Industries Division.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

POSSIBLE QUESTIONS?

Will consumers benefit from the changes proposed in HB 546?

CS/nt:csd